

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LORETTA MULVIHILL**

Claimant

VS.

**STORMONT-VAIL REGIONAL MEDICAL CENTER**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 216,062

**ORDER**

Respondent appeals from the October 24, 1997, Award entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument May 27, 1998.

**APPEARANCES**

Claimant appeared by her attorney, John J. Bryan of Topeka, Kansas. Respondent, a qualified self-insured, appeared by its attorney, James C. Wright of Topeka, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date or dates alleged?
- (2) Did claimant provide notice to respondent in a timely fashion as required by K.S.A. 44-520?
- (3) Is claimant's condition the result of the natural aging process and, therefore, not compensable?

- (4) The nature and extent of claimant's disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

**Findings of Fact**

Claimant alleges accidental injury beginning July 13, 1996, and continuing as a series of injuries through July 30, 1996, claimant's last day of employment with respondent prior to surgery. Claimant began experiencing neck, left shoulder, and arm problems on approximately July 13, 1996, while pushing a cart full of hospital laundry. Claimant had been performing her duties in linen service for 23 years. Her duties included loading the carts, sorting laundry, running driers, moving carts back and forth including up and down ramps and folding laundry. This is claimant's first workers compensation claim.

Claimant first noticed problems on July 13, 1996, while pushing a cart. She experienced pain in her left arm, up through her shoulder and into the back of her neck and head. Claimant originally thought the condition would improve but, instead, it worsened. Claimant advised her supervisor, Donna Meyers, on Monday, July 15, 1996, that there was something wrong with her arm but that she did not know what she had done to it. Claimant continued working for respondent through July 30, 1996, when she went home early due to a substantial increase in pain. On July 30, 1996, claimant talked to Alice Walker, the director of laundry, and advised her of her symptoms. Ms. Walker agreed that claimant should go home. Claimant was normally scheduled to work until approximately 3:30 p.m., but only worked until approximately 2:30 p.m. on July 30, 1996.

Sometime between July 24, 1996, and July 30, 1996, claimant lost her balance while getting out of a truck. She fell against the truck striking her chin and her left knee. She suffered bruises from that incident and reported these to Dr. R. Payne when he saw her on July 31, 1996. Dr. Payne checked claimant's Coumadin level, a heart medication, and discovered that it was too high. He felt claimant's easy bruising was a result of the high level of Coumadin and modified her medication level.

Claimant underwent a period of diagnosis and conservative treatment ultimately coming under the care of Dr. John D. Ebeling, a neurosurgeon in Topeka, Kansas. On September 3, 1996, Dr. Ebeling performed surgery upon claimant's cervical spine including anterior cervical discectomies and fusions at C5-6 and C6-7. Dr. Ebeling opined that the purpose of the surgery was to remove the disc material at C6-7 which was pressing against the nerve and to fuse the cervical spine, thus stabilizing claimant's degenerative condition and to prevent future injuries. Dr. Ebeling assessed claimant a 12 percent whole body functional impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised).

Respondent contends claimant's condition did not arise out of and in the course of her employment but is, instead, a consequence of the ordinary activities of claimant's everyday life and the natural aging process. While both Dr. Ebeling and Dr. Daniel D. Zimmerman agree that claimant's degenerative condition substantially preexisted the alleged injury dates, Dr. Ebeling did note that work activities such as pushing or pulling laundry carts, lifting linens, and bending forward could aggravate claimant's conditions. He acknowledged no particular aggravating incident or trauma which would make this a work-related injury and felt that most injuries occurred as a result of a single event. He did confirm that the ruptured disc which was pressing against the nerve root is the kind of condition which would sometimes worsen with continued physically demanding activities. He opined that a person of claimant's age and strength would require substantial physical activity to push 300-to-400 pound carts.

Claimant was examined by Dr. Daniel Zimmerman on May 15, 1997, at the request of claimant's attorney. Dr. Zimmerman acknowledged the findings discovered on the MRI of July 31, 1996, were not caused by any trauma associated with claimant's employment. He, however, did testify that claimant's preexisting condition in her cervical spine placed her at risk to have additional injury and that a person with a degenerative condition such as shown on claimant's x-rays could have an onset of pain without a specific traumatic incident. He went on to state that moving the cart would not have been expected to cause an onset of pain or disc herniation if claimant had not had her preexisting problems. Dr. Zimmerman assessed claimant a 14 percent whole body functional impairment which he opined was related to her preexisting condition.

The difference between Dr. Zimmerman's 14 percent and Dr. Ebeling's 12 percent is the 2 percent assessed by Dr. Zimmerman to the greater auricular nerve. Dr. Ebeling testified that the greater auricular nerve comes off the top of the cervical spine and his surgery performed on claimant's neck was at C5-6 and C6-7. Therefore, he was not in the vicinity of the greater auricular nerve and could have done nothing to cause any type of inflammation, irritation, or pain from this nerve. When Dr. Zimmerman was asked specifically about the 2 percent impairment to the greater auricular nerve, he was unable to say whether the greater auricular nerve condition was present before claimant suffered injury on July 13, 1996, through July 30, 1996, or whether the condition was caused by the work-related accident.

Respondent stipulates that written notice was provided on August 7, 1996, when claimant contacted Mr. David Brooks, a representative of respondent.

#### Conclusions of Law

The Appeals Board finds that claimant has proved accidental injury arising out of and in the course of her employment with respondent. Claimant discusses specific activities including the pushing of the cart which caused her to become symptomatic and caused her symptoms to worsen over a 17- to 18-day period. No evidence has been presented to show claimant's pain originated from any other source.

While it is acknowledged that claimant suffers from significant degenerative conditions, both Dr. Zimmerman and Dr. Ebeling, although reluctantly, acknowledged the activities performed by claimant with respondent would aggravate the claimant's preexisting condition.

The phrase "out of employment" points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises out of the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service." Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

The evidence in this circumstance is sufficient to show that claimant suffered accidental injury both out of and in the course of her employment with respondent. The symptoms began while claimant was at work, pushing a cart, which was part of her normal employment responsibilities for respondent. The condition continued to worsen over a period of several days, again, while claimant was performing her normal work duties. The Appeals Board finds claimant's testimony along with the supporting testimony of Dr. Zimmerman and Dr. Ebeling to be sufficient to satisfy claimant's burden in this regard.

As the Appeals Board has found that claimant suffered a series of injuries rather than a specific trauma on July 13, 1996, the issue of notice is also decided in claimant's favor. A series of injuries through July 30, 1996, coupled with claimant's notice to respondent on August 7, 1996, would be sufficient to satisfy the 10-day notice requirement of K.S.A. 44-520. See McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).

Respondent objects to any award to claimant under these circumstances citing K.S.A. 1996 Supp. 44-508(e) which excludes an award if it is shown that the employee suffers disability as a result of the natural aging process or the normal activities of day to day living. In this instance, while it is acknowledged that claimant had substantial preexisting conditions, these conditions were aggravated by her work.

With regard to the nature and extent of claimant's injury and/or disability, the Appeals Board finds that the award granting claimant a 12 percent whole body functional impairment is appropriate. No work disability is alleged in this circumstance as claimant has returned to work for respondent at a comparable wage. Therefore, the dispute exists only between Dr. Ebeling's 12 percent whole body functional impairment and Dr. Zimmerman's 14 percent functional whole body impairment. The difference arises from Dr. Zimmerman's award of 2 percent to the body as a result of damage to the greater auricular nerve. The Appeals Board finds Dr. Zimmerman's testimony in this regard does not sufficiently persuade the Appeals Board that the auricular nerve was aggravated or any way damaged as a result of the injury or subsequent treatment. Dr. Ebeling, the treating physician, testified emphatically that his surgery was not in the vicinity of the greater auricular nerve and would not in any way have aggravated or caused claimant's symptoms. Therefore, the Appeals Board finds that Dr. Ebeling's assessment of a 12 percent whole body functional impairment is appropriate and awards same.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict, dated October 24, 1997, should be, and is hereby, affirmed and claimant, Loretta Mulvihill, is granted an award against the respondent, Stormont-Vail Regional Medical Center, a self-insured, for a 12% whole body functional impairment, based upon an average weekly wage of \$329.42 per week.

Claimant is entitled to 13.71 weeks temporary total disability compensation at the rate of \$219.62 per week, totalling \$3,010.99, followed by 49.8 weeks permanent partial disability at the rate of \$219.62 per week, totalling \$10,937.08 for a 12% permanent partial general body disability making a total award of \$13,948.07, all of which is due and owing and ordered paid minus amounts previously paid at the time of this award.

Claimant's contract for attorneys fees is approved insofar as it does not conflict with the language of K.S.A. 44-536 applicable to this date of accident.

Future medical will be awarded upon proper application to and approval by the Director.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed to the respondent and its insurance carrier to be paid as follows:

Curtis, Schloetzer, Hedberg, Foster  
& Associates

\$ 206.75

Appino & Biggs Reporting Service

196.60

(Amount of Deposition of Loretta Mulvihill taken October 10, 1996 Unknown)

Gene Dolginoff Associates, Ltd.

535.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c:     John J. Bryan, Topeka, KS  
       James C. Wright, Topeka, KS  
       Bryce D. Benedict, Administrative Law Judge  
       Philip S. Harness, Director